

REMARKS

By the foregoing Amendment, the specification has been amended to correct a typographical error, Claims 1, 5, 6, 9, 13, 15, 19 and 24-26 have been amended, and Claim 10 has been cancelled. Favorable reconsideration of the application is respectfully requested.

Claims 1 and 19 were rejected under 35 U.S.C. §112, second paragraph, on the grounds of indefiniteness for lack of antecedent basis for the recitation of "the vertical ... movement." Claims 1 and 19 have been amended to more clearly define the vertical and rotational movement and to correct the problem of lack of antecedent basis for recitation of the vertical and rotational movement, so that it is believed that the rejection of Claims 1 and 19 on the grounds of indefiniteness can be withdrawn.

Claims 1-5 and 13-18 were rejected under 35 U.S.C. §102(b) on the grounds of anticipation by Levine, disclosing a mixing apparatus for blending hard ice cream or other frozen confections. Claims 1 and 13 have been amended to recite "a safety shield movably mounted to said housing in a safeguard position adjacent to said auger to shield an operator from contacting the auger in said second lowered position during operation of the apparatus." Support for recitation of the safety shield, and the safety function of the safety shield can be found in the specification at page 4, lines 10-18; page 8, line 6; page 12 lines 18-25; and page 13, lines 9-11; and in original Claim 10. It is respectfully submitted that Levine does not teach, disclose or suggest a safety shield movably mounted to a housing of the mixing apparatus in a safeguard position adjacent to the

auger to shield an operator from contacting the auger in a lowered position during operation of the apparatus, as is claimed, and that Claims 1-5 and 13-18 are novel and inventive over Levine. It is therefore respectfully submitted that the rejection of Claims 1-5 and 13-18 on the grounds of anticipation by Levine should be withdrawn.

Claims 6-12 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Levine. Claim 10 has been cancelled. Claim 6 has been amended to recite "a safety shield movably mounted to said housing in a safeguard position adjacent to said auger to shield an operator from contacting the auger in said second lowered position during operation of the apparatus." It is respectfully submitted that Levine does not teach, disclose or suggest a safety shield movably mounted to a housing of the mixing apparatus in a safeguard position adjacent to the auger to shield an operator from contacting the auger in a lowered position during operation of the apparatus, as is claimed, and that Claims 6-9 and 11-12 are novel and inventive over Levine. It is therefore respectfully submitted that the rejection of Claims 6-12 on the grounds of obviousness from Levine should be withdrawn.

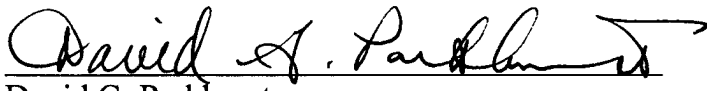
Claims 19-26 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Levine in view of Curry et al. The Examiner acknowledged that Levine does not teach injected air being mixed with a frozen confection. Curry et al. was cited as disclosing injecting air from a pressurized source into a liquid food substance, mixing the air and liquid food substance, and freezing the mixture to produce a frozen confection. Claim 19 has been amended to recite providing a frozen dessert apparatus with "a safety shield movably mounted to said housing in a safeguard position adjacent to

said auger to shield an operator from contacting the auger in said second lowered position during operation of the apparatus," and "inhibiting the rotational motion of the auger if the safety shield is not in said safeguard position, and allowing the rotational motion of the auger if the safety shield is in said safeguard position." It is respectfully submitted that Levine and Curry et al. do not teach, disclose or suggest a safety shield movably mounted to a housing of the mixing apparatus in a safeguard position adjacent to the auger to shield an operator from contacting the auger in a lowered position during operation of the apparatus, inhibiting the rotational motion of the auger if the safety shield is not in the safeguard position, and allowing the rotational motion of the auger if the safety shield is in the safeguard position," as is claimed. It is therefore respectfully submitted that Claims 19-26 are novel and inventive over Levine and Curry et al., taken individually or in combination, and that the rejection of Claims 19-26 on the grounds of obviousness from Levine in view of Curry et al. should be withdrawn.

In light of the foregoing amendments and remarks, it is respectfully submitted that the application should now be in condition for allowance, and an early favorable action in this regard is respectfully requested.

Respectfully submitted,

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